

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MEDINA, JR.,
Plaintiff,

v.

GUSTAVO MARTINEZ, *et al.*,
Defendants.

Case No. 1:23-cv-00935-KES-EPG (PC)

ORDER PERMITTING PLAINTIFF
TO RE-SUBMIT SUBPOENA FORMS

Plaintiff Robert Medina, Jr. was confined in Fresno County Jail (FCJ) at the time the events giving rise to this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff proceeds *pro se* and *in forma pauperis* on his Eighth Amendment claim against Defendants J. Alvarez, Gustavo Martinez, and First-Name-Unknown (FNU) Martinez.

On September 13, 2024, waivers of service mailed to both Gustavo Martinez and FNU Martinez at FCJ by U.S. Marshals were returned unexecuted. (ECF No. 32). Notes indicate that G. Martinez is no longer at FCJ and that FNU Martinez could not be identified, and that more information is needed. (*Id.* at 1, 3).

In order to obtain information to identify and serve these Defendants, on September 25, 2024, the Court issued Order Permitting Limited Discovery (ECF No. 34), allowing Plaintiff to seek discovery through a subpoena *duces tecum* to request documents related to the identity and current addresses of Defendants G. Martinez and FNU Martinez. The Court advised Plaintiff

1 that, if Plaintiff wished to use such a subpoena, “within thirty days of this order, he should fill
2 out forms AO 88B and USM-285 for each defendant . . . and return them to the Court.” (ECF
3 No. 34 at 2). The Court then served the Order and the forms on Plaintiff.

4 On October 18, 2024, the Court received forms AO 88B and USM-285 from Plaintiff,
5 along with a note that stated in part “I, Medina, Jr. do not understand. I do not have there
6 address or phone numbers. To my Defendant’s. Or I do not have any access to my Defendant’s
7 Infor. So I’m asking for you to look up there infor.” (ECF No. 35). Plaintiff addressed
8 subpoenas to “All photos of all officers that night” and listed date and time of production as
9 December 15, 2022 (ECF No. 35 at 2, 4). Plaintiff also completed “proof of service” sections of
10 the subpoena forms (*id.* at 3, 5) and checked boxes on the USM-285 forms in the sections
11 marked “SPACE BELOW FOR USE OF U.S. MARSHAL ONLY – DO NOT WRITE
12 BELOW THIS LINE” (*id.* at 7, 8). Finally, the USM-285 forms list G. Martinez and J. Alvarez
13 as names of the individuals to be served. (*Id.*)

14 The Court is unable to direct service of these documents as they have been completed.
15 The subpoenas are not addressed to any property entity. They do not identify documents that
16 Plaintiff seeks. Plaintiff has listed a time of production as years in the past. Plaintiff has
17 improperly filled out the proof of service, which he is supposed to leave blank.

18 However, the Court will re-send the AO 88B and USM-285 forms to Plaintiff and give
19 him one final opportunity to complete them properly. Since Plaintiff is seeking information
20 about employees at Fresno County Jail, Plaintiff may choose to address the subpoena to Fresno
21 County Jail. In the space between the lines starting with “production” and “place,” Plaintiff
22 should identify the documents he is seeking that would assist him in identifying and serving
23 Defendants G. Martinez and FNU Martinez, such as any documents listing their addresses and
24 phone numbers, or photos of the officers on duty the day of the alleged incident. The place and
25 date and time of the production refer to the date on which the documents should be produced to
26 the Plaintiff.¹

27
28 ¹ The Court notes that J. Alvarez has been served by U.S. Marshals and therefore,
Plaintiff does **not** need to seek any information related to Defendant J. Alvarez.

Once Plaintiff has completed and returned the forms, the Court will direct the United States Marshals Service to serve the subpoenas. Proof of service sections of the subpoena forms should be left blank, as well as the lower portions of USM-285 "Process receipt and return" forms. These sections will be filled out by U.S. Marshals once they serve the subpoenas.

Accordingly, **IT IS ORDERED** as follows:

1. The Clerk of Court is directed to send Plaintiff two copies of form AO 88B (a subpoena form) and two copies of form USM-285 (a United States Marshals form for process receipt and return).
2. If Plaintiff wishes to seek documents from a person or entity regarding Defendants G. Martinez and FNU Martinez, Plaintiff has **thirty days** from the date of this order to complete and return forms AO 88B and USM-285 for each defendant.
3. All other provisions of the Court's Order Permitting Limited Discovery (ECF No. 34) remain in effect.
4. **Failure to comply with this order may result in the dismissal of Defendants G. Martinez and FNU Martinez.**

IT IS SO ORDERED.

Dated: **October 22, 2024**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE